

## **REMARKS/ARGUMENTS**

### **General Remarks**

The applicant previously submitted a response that the office held to be non-responsive in light of an earlier election. The applicant disagrees in some respects, but *amended new claims* to expressly recite method claims drawn to the previously elected invention. As it appears that the previously presented claims were entered, the amended claims bear the status identifier "currently amended". *Earlier canceled claims 1-34 remain canceled.*

### **Information Disclosure Statement**

The applicant's prior counsel submitted an IDS, listing RU 2 163 840 as a reference and indicated under the section "DATE" the effective filing date of that patent (September 30, 1999). However, it should be noted that *the above date is the effective filing date* from which the patent term is calculated (For determination of the effective filing date, see e.g., Russian Patent Law Art 21(1), (3)), *and not the date at which the invention is patented or the date of publication.* The '840 patent issued on March 10, 2001, which is also the date of the first publication as indicated in the corresponding field tag (46). Therefore, *the '840 patent has a prior art date of March 10, 2001*, and not as erroneously alleged a prior art date of September 30, 1999.

### **Reinstated Election of Species**

Based on the Office's contention that the '840 would qualify as prior art document, the Examiner reinstated a previously advanced election of species. The applicant disagrees for reasons provided above. However, as all presently pending claims are canceled, the reinstated election is moot.

### **35 USC § 102(b)**

Claims 1, 3, 9-22, and 34 were rejected under 35 USC § 102(b) as being anticipated by the '840 patent. The applicant disagrees as the '840 patent is not a proper prior art document for reasons provided above.

35 USC § 102(b) requires that "...the invention was *patented or described in a printed publication* in this or a *foreign country*...more than one year prior to the date of application for

patent in the United States...". As the '840 invention was patented/published on March 10, 2001, the '840 reference does not apply to the presently claimed subject matter. However, as claims 1-34 were canceled, the above rejection is moot.

In view of the present amendments and arguments, the applicant believes that all claims are now in condition for allowance. Therefore, the applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

~~RUTAN & TUCKER~~

By 

Martin Fessenmaier, Ph.D.

Reg. No. 46,697

Tel.: (714) 641-5100